IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.838 of 1999

M.Palanisamy .. Appellant/Complainant

vs.

K.Palanisamy .. Respondent/A1

Prayer: This appeal has been filed under Section 378 of Code of Crl. Procedure Code preferred against judgment dated 9.7.1999 made in S.T.C.No.283 of 1992 on the file of the Judicial Magistrate No.VII, Coimbatore.

For Appellant : Mr.A.V.Arun
For Respondent : Mr.C.M.Gunasekaran

JUDGMENT

This appeal has been preferred against the judgment of acquittal in S.T.C.No.283 of 1991 on the file of the Judicial Magistrate No.VII, Coimbatore, in which the accused has been charged under Section 341, 323 and 109 IPC. A private complaint under Section 200 was preferred by P.W.1 against the accused, Sub-Inspector of Police(A1), Pothanoor Police Station and against one Chinnasamy(A2).

2. After recording the sworn statement of the complainant, the learned Judicial Magistrate has taken the private complaint on file as STC.No.283/92 and on appearance of the accused furnished copies under Section 207 Cr.P.C., and when the charges against the accused were explained to them and questioned they pleaded not guilty.

3. On the side of the complainant, the complainant has examined one Easwaran as P.W.1 and an Assistant Surgeon of the Government Hospital Coimbatore was examined as P.W.2. No documentary evidence was marked on the side of the complainant.

4. After going through the available evidence, the learned Judicial Magistrate has come to the conclusion that the complainant has failed to prove the guilt of the accused and accordingly acquitted the accused against the charges levelled against them. Against the findings of acquittal by the learned Judicial Magistrate, this appeal has been

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preferred by the complainant.

5. Now the point for determination in this appeal is whether the findings of the learned Judicial Magistrate in STC.No.283/1992 on the file of the Judicial Magistrate No.VII, Coimbatore, is perverse in nature to warrant any interference from this Court?

6. The Point:- Heard the submissions made by both sides. According to Easwaran-P.W.1, Pothanoor Police took him along with his brother and the complainant on 18.2.1992 and A1-Sub Inspector of Police Pothanoor had pushed Palanisamy (complainant) into the lockup room and assaulted him with hands on the head and also abused him. The doctor Kalaiselvi, who had examined the complainant on 19.2.1992 at about 4.40 pm, in her evidence as P.W.2 has categorically stated that she has not seen any external injury on the body of the complainant. Ex.P.1 is the wound certificate issued by her. The reasoning given by the learned trial judge for acquittal is that even in the private complaint P.W.1 has stated that the occurrence has known to one Eswaran, but the said Easwaran was not examined on the side of the complainant before the trial Court. But Easwaran was examined as P.W.1 in C.C.283/1992. The learned trial judge in clear terms has observed that apart from the fact that A1-Sub Inspector of Police has arrested and locked up the complainant, there is no evidence on record to show that the complainant was also assaulted by A1 at the instigation of A2. As far as A2 is concerned the case has been split up. It is further seen from the judgment of the trial Court that only on the complaint preferred by one Chinnasamy, A1 had arrested the complainant and placed in the lockup. Only on the basis of the available evidence, the learned Judicial Magistrate has come to the conclusion that there is no sufficient evidence produced by the complainant to warrant conviction. Giving benefit of doubt to the accused the learned Trial judge acquitted the accused which in my opinion does not warrant any interference from this Court since the findings of the learned trial Judge is neither illegal nor improper or infirm. The learned trial Judge has mentioned only the sworn statement of the complainant Palanisamy as P.W.1. But actually Easwaran was examined as P.W.1 and Dr.Kalaiselvi was examined as P.W.2. But their evidence were not in any way adverse to the interest of the accused. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial judge in STC.No.283 of 1992 on the file of the Judicial Magistrate No.VII, Coimbatore. Point is answered accordingly.

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7. In the result, the appeal is dismissed confirming the judgment in STC.No.283 of 1992 on the file of the Judicial Magistrate No.VII, Coimabtore.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

To,
1.The Judicial Magistrate No.Vii,
Coimbatore.

2.The Chief Judicial Magistrate,
Coimbatore.

+ 1 CC To Mr. S.Subbiah, Advocate SR NO.31700
+ 1 CC To M/s.CM.Gunasekaran, Advocate SR NO.31568

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